IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.5477 of 2006 (O&M)

Date of Decision: 3.07.2007

Amarbir Singh ..Petitioner

Vs.

Kapil Beri ..Respondent

Coram: Hon'ble Mr. Justice Vinod K.Sharma

Present: Mr.S.S.Sandhu, Advocate,
for the petitioner.

Mr. Om Pal Sharma, Advocate,
for the respondent.

Vinod K.Sharma,J. (Oral)

Present revision petition has been filed against the order dated 20.9.2006 passed by the learned Civil Judge (Junior Division) vide which evidence of the petitioner has been ordered to be closed and the summoned witnesses were ordered to be discharged.

The reasons given for closing the evidence of the petitioner by

the learned lower court is that the petitioner in spite of availing of four opportunities has failed to conclude its evidence. This finding has been challenged by the learned counsel for the petitioner. He has made reference to the different orders passed by the leaned trial court in the proceedings. The said contentions have not been controverted by the learned counsel for the respondent.

A reading of the zimni orders shows that issues in this case were framed on 11.1.2005 and the case was adjourned to 29.4.2005 for the evidence of the plaintiff. However, no evidence could be led as the court was on leave on that date. The case was thereafter adjourned to 22.9.2005 when an application was moved for deleting one of the issues which was stated to be unnecessary and not arising out of the pleadings of the parties. Said application was adjourned from time to time on the request of the learned counsel for the defendant and it was only on 24.5.2006 when in view of the 'no objection' given by the learned counsel for the defendant-respondent, the said issue was deleted.

The petitioner in the mean time had summoned the witnesses and out of seven witnesses to be examined by the petitioner, 5 witnesses filed affidavits in examination-in-chief. However, the case was adjourned for cross-examination on the request of the learned counsel for the respondent. On the next date of hearing out of summoned witnesses one Asra Ram, Sub Post Master was present. However, as the counsel for the petitioner was not well, he was not examined and ordered to be discharged and the impugned order was also passed closing the evidence of the

petitioner.

The submissions made by the learned counsel for the petitioner above mentioned shows that the impugned order does not take notice of proceedings correctly. As a matter of fact, the petitioner was given first opportunity to lead evidence on 24.5.2006 when as many as 5 witnesses were examined by him by filing affidavits in examination-in-chief and the case was adjourned for cross-examination. In this situation, the learned lower court was not justified in closing the evidence of the petitioner, especially when the witnesses to be examined were duly served. It was the duty of the court to have taken steps to get the presence of the witnesses who were absent in spite of service.

Accordingly, this revision is allowed. The impugned order is set aside. The petitioner is given three opportunities to summon and examine the witnesses with the assistance of the Court.

The parties through their counsel are directed to appear before the learned Trial Court on 6.8.2007.

July 03,2007 **(Vinod K.Sharma)**
rp **Judge**